

Canned or prewritten computer software or software upgrades transferred to a customer, either on a tangible personal property medium or electronically, will be subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

March 15, 2004

Dear Xxxxx:

This letter is in response to your letter dated November 17, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We currently produce and sell to attorneys CD-ROMs containing decisions in a full-text searchable format. These sales to taxable entities are subject to the Illinois sales tax and we have paid sales taxes for sales receipts through the 3rd quarter 2003.

Yet, we will soon be placing the full library that is currently on CD-ROMs on a subscriber accessed web site. We may continue to produce CDs for the few customers who either do not use the web or want both. It is my understanding that the monies we receive for access to the web site (we are considering offering the options of: 1 week, 1 month, 6 months, or 1 year) are not subject to sales taxes. Yet I would like to get a ruling on that issue.

In the meantime, even though we are offering all CD customers who paid their Oct 15 invoices for their 2003 CD service free access to the web site (once up and running) through Sept. 30, 2004, we consider that we have been selling CDs and will forward sales taxes on these sales.

Your response will be greatly appreciated, since we hope to have the web site fully operational by the end of this year and must know whether to include sales taxes on the invoices.

DEPARTMENT'S RESPONSE:

We regret that we cannot provide you with a specific answer in the context of a General Information Letter. The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The sale of subscriber access to an Internet website is generally not considered the sale of tangible personal property, and would not be subject to Retailers' Occupation Tax liability. Please note however, that any canned or prewritten computer software or software upgrades transferred to a customer, either on a tangible personal property medium or electronically, will be subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.1935.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk